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OLÉ MEXICAN FOODS, INC.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JANET GAMBINO, *individually and on
behalf of all those similarly situated,*

Plaintiff,

v.

OLÉ MEXICAN FOODS, INC., *a
Georgia Corporation,*

Defendant.

Case No. 5:25-CV-00497

**DEFENDANT OLÉ MEXICAN
FOODS, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO
CLASS ACTION COMPLAINT**

Complaint Filed: February 25, 2025

Defendant Olé Mexican Foods, Inc. (“Defendant Olé”) answers Plaintiff Janet Gambino’s (“Plaintiff”) Class Action Complaint (the “Complaint”) as follows:

PARTIES

1. Defendant Olé is without sufficient knowledge to admit or deny the allegations in paragraph 1 of the Complaint and on that basis denies the allegations.

2. Defendant Olé admits that it is a Georgia corporation with its principal place of business in Norcross, Georgia, but denies the remaining allegations in paragraph 2.

JURISDICTION

3. Defendant Olé denies the allegations in paragraph 3 and denies that this is a proper class action.

4. Defendant Olé admits that Plaintiff “seeks to represent Class members who are citizens of states” but denies that Plaintiff is an adequate representative and

1 denies that this is a proper class action. Except as specifically admitted, Defendant
2 denies the remaining allegations in paragraph 4.

3 5. Defendant Olé denies the allegations in paragraph 5 of the Complaint.

4 6. Defendant Olé denies the allegations in paragraph 6 of the Complaint.

5 7. Defendant Olé denies the allegations in paragraph 7 of the Complaint.

6 8. Defendant Olé admits that this Court has personal jurisdiction over it, for
7 purposes of this lawsuit, and denies the remaining allegations in paragraph 8.

8 9. Defendant Olé admits that it distributes and/or sells its products in
9 California and denies the remaining allegations in paragraph 9.

10 10. Defendant Olé denies the allegations in paragraph 10 of the Complaint.

11 11. Defendant Olé admits that it distributes and/or sells its products in
12 California and denies the remaining allegations in paragraph 11.

13 12. Defendant Olé denies the allegations in paragraph 12 of the Complaint.

14 13. Defendant Olé denies the allegations in paragraph 13 of the Complaint.

15 14. Defendant Olé admits that this Court has personal jurisdiction over it, for
16 purposes of this lawsuit, and denies the remaining allegations in paragraph 14.

17 **FACTUAL ALLEGATIONS**

18 15. Defendant Olé is without sufficient knowledge to admit or deny the
19 allegations in paragraph 15 and on that basis denies the allegations.

20 16. Defendant Olé is without sufficient knowledge to admit or deny the
21 allegations in paragraph 16 and on that basis denies the allegations.

22 17. Defendant Olé is without sufficient knowledge to admit or deny the
23 allegations in paragraph 17 and on that basis denies the allegations.

24 18. Defendant Olé is without sufficient knowledge to admit or deny the
25 allegations in paragraph 18 and on that basis denies the allegations.

26 19. Defendant Olé admits that the product packaging depicted in the
27 Complaint contains the statement “4g net carbs per serving” but denies the remaining
28 allegations in paragraph 19.

1 20. Defendant Olé admits that the product packaging depicted in the
2 Complaint contains the statements “High Fiber,” “Carb Friendly,” and “Keto
3 Certified,” but denies the remaining allegations in paragraph 20.

4 21. Defendant Olé admits that the product packaging depicted in the
5 Complaint contains the referenced calculation but denies the remaining allegations in
6 paragraph 21.

7 22. Defendant Olé admits that the product packaging depicted in the
8 Complaint contains the referenced calculation but denies the remaining allegations in
9 paragraph 22.

10 23. Defendant Olé denies the allegations in paragraph 23 of the Complaint
11 and further denies that Plaintiff’s purported testing is reliable or valid.

12 24. Defendant Olé denies the allegations in paragraph 24 of the Complaint
13 and further denies that Plaintiff’s purported testing is reliable or valid.

14 25. Defendant Olé denies the allegations in paragraph 25 of the Complaint
15 and further denies that Plaintiff’s purported testing is reliable or valid.

16 26. Defendant Olé denies the allegations in paragraph 26 of the Complaint
17 and further denies that Plaintiff’s purported testing is reliable or valid.

18 27. Defendant Olé denies the allegations in paragraph 27 of the Complaint
19 and further denies that Plaintiff’s purported testing is reliable or valid. Defendant Olé
20 further denies that the referenced statements are actionable.

21 28. Defendant Olé denies the allegations in paragraph 28 of the Complaint.

22 29. Defendant Olé denies the allegations in paragraph 29 of the Complaint.

23 30. Paragraph 30 of the Complaint is a statement of Plaintiff’s legal
24 contentions to which no response by Defendant Olé is necessary.

25 31. Defendant Olé denies the allegations in paragraph 31 of the Complaint.

26 32. Defendant Olé denies the allegations in paragraph 32 of the Complaint.

27 33. Defendant Olé denies the allegations in paragraph 33 of the Complaint.

28 34. Defendant Olé denies the allegations in paragraph 34 of the Complaint.

CLASS ACTION ALLEGATIONS

35. Defendant Olé admits that Plaintiff purports to bring this action “individually and as a representative of all those similarly situated” but denies that Plaintiff is an adequate class representative and further denies that this action is a proper class action. Except to the extent specifically admitted, Defendant denies the remaining allegations in paragraph 35.

36. Defendant Olé admits that it and its “affiliates, parents, subsidiaries, employees, officers, agents, and directors,” and “any judicial officers presiding over this matter and the members of their immediate families and judicial staff” should be “excluded” from the purported class action but denies that this action is a proper class action. Except to the extent specifically admitted, Defendant denies the remaining allegations in paragraph 36.

37. The allegations in paragraph 37 of the Complaint are Plaintiff’s legal contentions and do not require a response. To the extent a response is required, Defendant Olé denies the allegations in paragraph 37.

38. Defendant Olé denies the allegations in paragraph 38 of the Complaint.

39. Defendant Olé denies the allegations in paragraph 39 of the Complaint.

40. Defendant Olé denies the allegations in paragraph 40 of the Complaint and subparts (a)–(g) within.

41. Defendant Olé denies the allegations in paragraph 41 of the Complaint.

42. Defendant Olé denies the allegations in paragraph 42 of the Complaint.

43. Defendant Olé denies the allegations in paragraph 43 of the Complaint.

44. Defendant Olé denies the allegations in paragraph 44 of the Complaint.

45. Defendant Olé denies the allegations in paragraph 45 of the Complaint.

46. Defendant Olé denies the allegations in paragraph 46 of the Complaint.

47. Defendant Olé denies the allegations in paragraph 47 of the Complaint.

48. Defendant Olé denies the allegations in paragraph 48 of the Complaint and subparts (a)–(d) within.

1 49. Defendant Olé denies the allegations in paragraph 49 of the Complaint.

2 50. Defendant Olé denies the allegations in paragraph 50 of the Complaint.

3 51. Defendant Olé denies the allegations in paragraph 51 of the Complaint.

4 52. Defendant Olé denies the allegations in paragraph 52 of the Complaint.

5 53. Defendant Olé denies the allegations in paragraph 53 of the Complaint.

6 **COUNT 1**

7 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**

8 **CAL. CIV. CODE § 1750 *et seq.***

9 54. The allegations in paragraph 54 do not require a response. To the extent a
10 response is required, Defendant Olé denies the allegations in paragraph 54.

11 55. Defendant Olé is without sufficient knowledge to admit or deny the
12 allegations in paragraph 55 and on that basis Defendant denies the allegations in
13 paragraph 55.

14 56. Paragraph 56 of the Complaint contains Plaintiff's legal contentions to
15 which no response is required. To the extent a response is required, Defendant Olé
16 denies the allegations in paragraph 56.

17 57. Paragraph 57 of the Complaint contains Plaintiff's legal contentions to
18 which no response is required. To the extent a response is required, Defendant Olé
19 denies the allegations in paragraph 57.

20 58. Defendant Olé denies the allegations in paragraph 58 of the Complaint.

21 59. Paragraph 59 of the Complaint and subparts (a)–(e) within contain
22 Plaintiff's legal contentions to which no response is required. To the extent a response
23 is required, Defendant Olé denies the allegations in paragraph 59.

24 60. Defendant Olé denies the allegations in paragraph 60 of the Complaint.

25 61. Defendant Olé denies the allegations in paragraph 61 of the Complaint.

26 62. Defendant Olé denies the allegations in paragraph 62 of the Complaint.

27 63. Defendant Olé denies the allegations in paragraph 63 of the Complaint.

COUNT 2
UNJUST ENRICHMENT

64. The allegations in paragraph 64 do not require a response. To the extent a response is required, Defendant Olé denies the allegations in paragraph 64.

65. Paragraph 65 of the Complaint contains Plaintiff's legal contentions to which no response is required. To the extent a response is required, Defendant Olé denies the allegations in paragraph 65.

66. Defendant Olé denies the allegations in paragraph 66 of the Complaint.

67. Defendant Olé denies the allegations in paragraph 67 of the Complaint.

68. Defendant Olé denies the allegations in paragraph 68 of the Complaint.

69. Defendant Olé denies the allegations in paragraph 69 of the Complaint.

70. Defendant Olé denies the allegations in paragraph 70 of the Complaint.

71. Defendant Olé admits that Plaintiff seeks the referenced relief but denies that Plaintiff, or members of the purported class, are entitled to such relief. Except as specifically admitted, Defendant denies the allegations in paragraph 71.

72. Defendant Olé denies the allegations in paragraph 72 of the Complaint.

COUNT 3
BREACH OF EXPRESS WARRANTY

73. The allegations in paragraph 73 do not require a response. To the extent a response is required, Defendant Olé denies the allegations in paragraph 73.

74. Defendant Olé admits that it designed, manufactured, marketed, distributed, and/or sold the referenced products and states that the products' packaging speaks for itself. Except as specifically admitted, Defendant denies the allegations in paragraph 74.

75. Paragraph 75 of the Complaint contains Plaintiff's legal contentions to which no response is required. To the extent that a response is required, Defendant Olé denies the allegations in paragraph 75.

76. Defendant Olé denies the allegations in paragraph 76.

1 77. Defendant Olé denies the allegations in paragraph 77.

2 **PRAYER FOR RELIEF**

3 Defendant Olé denies that Plaintiff, or members of the purported class, are
4 entitled to the relief stated in the “Prayer for Relief” paragraph of the Complaint.

5 **AFFIRMATIVE DEFENSES**

6 Defendant Olé asserts the following separate affirmative defenses to the
7 Complaint. By asserting these affirmative defenses, Defendant Olé is not altering the
8 burden of proof or burden of going forward with evidence which otherwise exists
9 with respect to any particular issue in this case. All defenses are pleaded in the
10 alternative and do not constitute an admission of liability or that Plaintiff or the
11 purported class are entitled to any relief whatsoever. All defenses pleaded below are
12 based upon Defendant’s current understanding of the claims asserted by Plaintiff, and
13 Defendant reserves the right to plead additional defenses when and if they become
14 appropriate and/or available in this action.

15 **First Affirmative Defense**

16 The Complaint fails to state a claim upon which relief can be granted.

17 **Second Affirmative Defense**

18 Some or all of the claims of Plaintiff and/or members of the putative class are
19 barred for lack of standing.

20 **Third Affirmative Defense**

21 Some or all of the claims of Plaintiff and/or members of the putative class are
22 barred by the applicable statute of limitations.

23 **Fourth Affirmative Defense**

24 Injury, if any, suffered by Plaintiff and/or putative Class Members did not
25 result from and was not proximately caused by any wrongful conduct on the part of
26 Defendant Olé .

27 **Fifth Affirmative Defense**

28 Some or all of the claims of Plaintiff and/or putative Class Members are barred

1 because they have not sustained any ascertainable loss or damages.

2 **Sixth Affirmative Defense**

3 This action may not be maintained as a class action because, among other
4 reasons, (a) Plaintiff is not an adequate class representatives and cannot fairly and
5 adequately protect the interests of the purported class; (b) individual issues of law or
6 fact predominate over any common questions; (c) a class action is not a superior
7 method for the fair and efficient adjudication of the controversy; (d) none of the other
8 requirements of maintaining this action as a class action have been met; (e) the
9 asserted class is not properly defined; (f) the asserted class is not ascertainable; and
10 (g) the asserted class includes members who have suffered no injury

11 **Seventh Affirmative Defense**

12 This action may not be maintained as a class action because, among other
13 reasons, Plaintiff cannot establish liability, injury, or damages by common proof.

14 **Eighth Affirmative Defense**

15 The claims of Plaintiff and/or any member of the putative class who received a
16 refund for their purchases of the Products at issue are barred by that prior payment.

17 **Ninth Affirmative Defense**

18 Any recovery received by Plaintiff and any member of the putative class should
19 be offset by the amount of any refunds they have received for the purchases of the
20 Products at issue.

21 **Tenth Affirmative Defense**

22 Plaintiff and/or members of the putative class are barred from recovery for
23 breach of warranty because of lack of privity.

24 **Eleventh Affirmative Defense**

25 Plaintiff and the putative class have an adequate remedy at law and therefore are
26 not entitled to injunctive relief.

Twelfth Affirmative Defense

Each of the claims stated in the Complaint are barred by the doctrine of preemption.

Thirteenth Affirmative Defense

Defendant's alleged conduct is privileged as nonactionable puffery.

Fourteenth Affirmative Defense

Each of the claims stated in the Complaint are barred by the doctrine of estoppel (spoliation).

Fifteenth Affirmative Defense

Each of the claims stated in the Complaint are barred by the doctrine of waiver.

Sixteenth Affirmative Defense

Each of the claims stated in the Complaint are uncertain (vague and ambiguous) as a matter of law and therefore barred.

Seventeenth Affirmative Defense

Defendant Olé reserves the right to assert any further defenses that may become applicable as this action proceeds.

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PRAYER FOR RELIEF

WHEREFORE, Defendant Olé Mexican Foods, Inc. prays for judgment as follows:

1. That Plaintiff and the putative class take nothing and the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Defendant's favor;
3. That Defendant be awarded all costs of suit incurred by it in this action;
4. That Defendant be awarded its attorneys' fees; and
5. That Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: April 25, 2025

KILPATRICK TOWNSEND & STOCKTON
LLP

/s/ Nancy L. Stagg
NANCY L. STAGG

Attorneys for Defendant
OLE MEXICAN FOODS, INC.